

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVIS RAY THOMPSON,

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

Defendants.

Case No. 1:21-cv-00001-AWI-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION WITHOUT PREJUDICE FOR
FAILURE TO EXHAUST

(Doc. No. 11)

Plaintiff Travis Ray Thompson is a state prisoner proceeding *pro se* in this civil rights action brought under 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 12, 2021, the assigned magistrate judge filed findings and recommendations, recommending that this action be dismissed for failure to exhaust administrative remedies. Doc. No. 11. The magistrate judge found that it is clear on the face of his complaint that Plaintiff failed to exhaust administrative remedies prior to initiating this action, as required by the Prison Litigation Reform Act ("PLRA"). *Id.* at 2. The magistrate judge provided plaintiff 14 days to file objections to the findings and recommendations. *Id.* at 5. After receiving an extension of time (Doc. No. 13), Plaintiff filed objections on April 9, 2021. Doc. No. 15.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo* review of this case. Having carefully reviewed the file, including Plaintiff's objections,

1 the Court finds the findings and recommendations to be supported by the record and proper
2 analysis. Plaintiff admits that he failed to exhaust administrative remedies. See Doc. No. 1 at 18-
3 19. Nevertheless, in his objections, he contends that he qualifies for an “imminent-danger”
4 exception to the PLRA’s exhaustion requirement. Doc. No. 15 at 2-. However, as explained by
5 the magistrate judge, it is unclear whether such an exception exists within the Ninth Circuit, and
6 even if one did, Plaintiff would not qualify for it because he does not allege facts in his complaint
7 showing that he is in danger of imminent, future harm. Doc. No. 11 at 3-4. The Court agrees with
8 the magistrate judge’s findings and analysis.

9 Accordingly, the Court ORDERS:

- 10 1. The findings and recommendations issued on February 12, 2021 (Doc. No. 11) are
11 ADOPTED in full;
- 12 2. This action is DISMISSED without prejudice for failure to exhaust administrative
13 remedies prior to filings suit; and,
- 14 3. The Clerk of the Court is directed to terminate all pending motions and to close this
15 case.

16 IT IS SO ORDERED.

17 Dated: April 21, 2021

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19 SENIOR DISTRICT JUDGE